IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

[Court's order whether the case is approved for reporting or not under Chapter VIII Rule 32 (2) (b)]

Description of the case

Writ Petition No. 464 (S/S) of 2007

1. Smt. Kusum Lata W/o Sri Omkar
2. Km.Archana D/o Sri Roshan Lal
3. Km. Raj Bala D/o Sri Kanhaie Lal

All are R/o Mohalla Tanda Banjara Post Office Sultanpur Patti, Tehsil Bazpur, District Udham Singh Nagar

--------Petitioners

Versus

1. State of Uttaranchal through Secretary Education, Uttaranchal Sashan Dehradun.
2. Principal, District Institute of Education Training Bhimtal, District Nainital
3. Additional Director N.C.E.R.T. Uttaranchal Narendra Nagar District Tehri Garhwal

-------- Respondents

Approved for reporting

~~Not approved for reporting~~

Date of Decision: August 3, 2007

Initial of Judge

Reserved

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------ Respondents

Hon'ble M.M.Ghildiyal, J.

Heard Sri B.S. Parihar, learned counsel for the petitioners and Sri Paresh Tripathi, learned Brief Holder for State of Uttarakhand for the respondents.

By means of this writ petition, the petitioner has prayed for the following reliefs;

1. Issue a writ, order or direction in the nature of certiorari quashing the impugned orders dated 14.9.2005 contained as (Annexure no. 1) to this writ petition.
2. Issue a writ, order or direction in the nature of mandamus commanding and directing the respondents to issue the certificates/mark sheet of the petitioners for special B.T.C. training course 2005 as they have successfully completed their training and their result has been declared by Siksha

Evam Pariksha Parishad Uttaranchal on 2.9.2005 as successful candidates.

3. Issue a writ, order or direction in the nature of mandamus commanding and directing the respondents to give the appointment to the petitioners as per their qualification in the Basic Education Schools.
4. Issue any other writ, order or direction, which be deemed fit and proper under the facts and circumstances of the case in favour of the petitioners.
5. Award cost of the writ petition to the petitioners.

On 14.09.2005, the Principal, District Institute of Education and Training (DIET), Bhimtal, District Nainital has informed the petitioners that the scheduled caste certificates submitted by the petitioners at the time of admission for Special B.T.C. course have been cancelled by the Tehsildar, Kashipur, District Udham Singh Nagar vide order dated 25th August, 2005.

The stand of the petitioners is that they are permanent resident of State of Uttarakhand and presently residing at Mohalla Tanda Banjara, Tehsil Bazpur, District Udham Singh Nagar and are member of scheduled caste community known as 'Bhuiyar' (weaver), which is notified under the Presidential Notification issued under Article 342 of the Constitution of India.

The petitioners applied for Special B.T.C Training under the category of scheduled caste candidate and have submitted the certificates issued by the Tehsildar, Kashipur. They have completed their training for Special B.T.C. in the year 2005 and have been declared successful by the Siksha Evam Pariksha Parishad, Uttaranchal. The said result was published in daily news paper

dated 02.09.2005, however, the mark sheet has been withheld by the Principal of DIET on the ground that the caste certificate submitted by them has been cancelled by Tehsildar, Kashipur vide order dated 25th August, 2005.

Vide order dated 25th August, 2005, Tehsildar, Kashipur has cancelled the caste certificate issued to 572 persons of Tehsil Kashipur/Bazpur/Jaspur.

The petitioners earlier filed Writ Petition No. 1137 (M/B) of 2005 before this Court challenging the order dated 25.08.2005 passed by Tehsildar, Kashipur canceling the caste certificates issued to the petitioners and order dated 14th September, 2005 by which the Principal, DIET has informed the petitioners about the cancellation of caste certificates by Tehsildar relating to the petitioners. Division Bench of this Court while disposing of the writ petition on 4th September, 2006 directed the Collector to re-examine the matter in detail by holding independent inquiry and pass fresh order. So far the order dated 25.08.2005 is concerned, the same was set aside by the Court on the ground the prior to cancellation of caste certificates, the petitioners were not afforded opportunity.

The submission of the learned counsel for the petitioners is that the respondents have no right to withhold the certificates and mark sheets of the petitioners for Special B.T.C. Training course, 2005, especially when they have successfully completed the training.

The respondents have filed counter affidavit and in the counter affidavit, they have submitted that this Court while setting

aside the order passed by the Tehsildar, Kashipur by which the caste certificates issued to the petitioners were cancelled, has directed the District Magistrate, Udham Singh Nagar to pass fresh order after giving opportunity to the petitioners and also after holding inquiry and since the petitioners have not submitted the order of District Magistrate, Udham Singh Nagar or fresh caste certificate issued by the District Magistrate, Udham Singh Nagar, the mark sheets of the petitioners have been withheld and the same shall be delivered to the petitioners as soon as the petitioners succeed in submitting the order passed by the District Magistrate in pursuance to the order passed by Division Bench of this Court.

It is not disputed that the petitioners have got admission for Special B.T.C. Training course in the year 2005 in the institute at Bhimtal under the category of scheduled caste on the basis of certificates issued to them by the authorities. It is also not disputed that the said certificates, on the basis of which they have got admission in the institution, have already been cancelled by the competent authority. Though the order of competent authority has been set aside by the High Court, but at the same time, the High Court has directed the authority concerned to inquire the matter and after giving opportunity of hearing pass fresh order in accordance with law. It is also not disputed that the petitioners could not submit the fresh caste certificates issued by the competent authority.

In these circumstances, I do not find any ground to direct the Principal, DIET to issue mark sheets or the certificates of Special B.T.C. Training to the petitioners. However, in the circumstances of the case, the District Magistrate is directed to

take decision on the question of issuance of caste certificates to the petitioners in accordance with law in pursuance to the order passed by the Division Bench of this Court on 4th September, 2006, in case the petitioners have approached the respondent authority by making application independently against the cancellation of their caste certificates by the Tehsildar as held by this Court in its order dated 4th September, 2006, within a period of Six weeks from the date of production of a certified copy of this order along with the application, if any, moved by the petitioners.

With this direction, the writ petition is finally disposed of. All the pending applications stand disposed of.

(M.M.Ghildiyal, J.)

August 3, 2007
VKS